

IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 16-0675

FILED

NOV 22 2016

CHARLES ROCKWOOD HORTON,

Petitioner and Appellant.

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

v.

O R D E R

STATE OF MONTANA,

Respondent and Appellee.

Charles Rockwood Horton has appealed from an order of the District Court denying his motion for remission of costs, and he now moves this Court for appointment of counsel for purposes of that appeal. He seeks to overturn the District Court's order that denied his petition to remove the requirement that he pay for his public defender, and for remission of costs he had already paid toward the public defender obligation. As grounds, he states that he is currently incarcerated and unable to afford private counsel. Horton adds that he believes he meets the eligibility requirements for appointment of counsel. We note that Horton represented himself in the District Court in this matter.

If financially unable to retain private counsel, a person charged with a felony or a misdemeanor for which a sentence of incarceration may be imposed is entitled to the appointment of counsel pursuant to § 46-8-101(2), MCA. The defendant is entitled to the representation of counsel through entry of the final judgment and an appeal. Section 46-8-103(1), MCA. However, once there is a final judgment of conviction and an appeal is taken or the time for appeal has expired, there is no unqualified statutory right to the appointment of counsel in subsequent proceedings.

Section 46-8-104, MCA, does provide for appointment of counsel after trial in limited circumstances. However, unless a statute mandates the appointment of counsel or the petitioner is clearly entitled to counsel under the United States or the Montana Constitution,

or other circumstances not applicable here exist, we require the establishment of extraordinary circumstances requiring the appointment of counsel to prevent a miscarriage of justice. Section 46-8-104(1)(e) and (3), MCA. Given that Horton is not facing additional charges, incarceration, or punishment related to his previous conviction, and given that he represented himself in this matter in the District Court, we conclude that Horton has not demonstrated that extraordinary circumstances exist to justify appointment of counsel. Accordingly,

IT IS ORDERED that the motion for the appointment of counsel is DENIED. The Clerk shall provide Mr. Horton with a copy of this Court's Civil Appellate Handbook for reference in preparing his appeal.

The Clerk is directed to provide a copy of this Order to counsel of record and to Charles Rockwood Horton personally.

DATED this 22nd day of November, 2016.

Patricia Cotter

James Garibay

Patricia Cotter

James Garibay

Justices